

REMARKS

Claims 17-47 are pending in the Application. Claims 18 and 34 have been amended. No new matter has been added. Claims 17, 20, 25, 34, 39, and 44 are independent.

Applicants of the present application would primarily like to point out that there are 31 claims pending in the application, 6 of which are independent, and each of which varies in scope in the recitation of elements and/or limitations. The Examiner has issued a blanket rejection of all of the pending 31 claims in a single sentence, by reciting four structural components in the Noda reference, while failing to make any reference to where the Noda patent discloses any of the numerous features of Applicants' claimed invention. 37 C.F.R. 1.104(c)(2) explicitly states:

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

As stated above, the Examiner hasn't made any reference or suggestion as to how the Noda reference could anticipate many of the elements included in Applicants' claims. As such, it is nearly impossible for the Applicants' to appropriately respond to the Office Action, as the intent and belief of the Examiner as to why or how the Noda reference could be seen to anticipate Applicants' claims is largely unknown due to the Examiner's brevity. While Applicants' have included remarks herein attempting to illustrate the shortcomings of the Noda reference in anticipation of what the Examiner *may have* believed to be anticipatory, because of the extremely brief explanation of the rejection, and the fact that there are numerous elements contained in the pending claims that are blatantly absent from the cited prior art, Applicant

respectfully requests that the finality of any subsequent Office Action with respect to unamended claims be withheld. Remarks directed toward specific claims are contained below.

On page 2 of the of the Office Action, Claims 17-47 are rejected under 35 U.S.C. §102(e) as being anticipated by Noda, et al., U.S. Patent No. 6,146,411. Applicants' respectfully traverse the rejection. In order for a reference to anticipate a claim, the reference must disclose each and every element of the claim.

Independent Claim 17 recites, in part, “a first system directing coolant in a mixed gas and liquid state...and a second system decreasing the percentage of gas in the coolant...” The Examiner has indicated on Page 2 of the Office Action that Noda discloses such elements in a fluid pump (34) and heat exchanger (50). It is unclear how the fluid pump (34) and heat exchanger (50) as disclosed in Noda can anticipate the cited portions of Claim 17. In fact, Noda fails to make any such reference to “a first system directing coolant in a mixed gas and liquid state...and a second system decreasing the percentage of gas in the coolant...” Rather, Noda specifically provides “sterile water or saline” may be used as a coolant (Col. 5:2-3), and fails to make any mention of “directing coolant in a mixed gas and liquid state” as stated in Claim 17. As Noda fails to disclose each and every element of Claim 17, the rejection under 35 U.S.C. §102(e) is unsupported by the art, and a withdrawal of the rejection is respectfully requested. In addition, as Claim 18 depends from independent Claim 17, a withdrawal of the rejection under 35 U.S.C. §102(e) is requested.

Claim 19 recites, in part, “wherein the controller establishes a duty cycle for cyclically allowing and denying entry of coolant into the chamber at a rate responsive to a sensed temperature *within the chamber*,”(emphasis added). Primarily, the Office Action makes no

reference to a particular portion of the specification of Noda that discloses the elements/limitations of Claim 19. Assuming, *arguendo*, that Noda discloses a controller and chamber, the sole point of temperature measurement of the device disclosed in Noda is the probe (22). Noda explicitly provides, “Proportional temperature controller 24 is programmed with appropriate time constraints based on the location probe 22 *in the patient’s body*...as mentioned above, probe 22 can be placed anywhere *in the body*,”(Col. 7:1-6)(emphasis added). As clearly stated, the probe 22 of Noda, which provides the single means for temperature measurement, is placed “in the body.” As such, it cannot sense a temperature “within the chamber,” as stated in Claim 19. Therefore, the rejection under 35 U.S.C. §102(e) is unsupported by the art and thus improper. Accordingly, a withdrawal of the rejection is respectfully requested.

Claim 20 recites, in part, “a first coolant flow path between the medical device and the coolant supply; a subcooler disposed about the portion of the first coolant flow path and having an inlet and an outlet; a second coolant flow path between the coolant supply and the inlet.” Noda provides a first fluid circuit (30) in communication with an IV bag (38), as shown in FIG. 1 of the Noda reference. Noda also provides a second fluid circuit (40). However, fluid circuit 40 is a closed looped fluid path, i.e., “fluid circuits 30 and 40 retain their fluids in isolation from each other,” (Col. 6:10-12). As such, there is a single fluid circuit involving the IV bag of Noda, which is contrary to providing “a second coolant flow path between the coolant supply and the inlet” of the subcooler, as stated in Claim 20. Claim 20 further recites “a temperature sensor in the subcooler,” which Noda fails to disclose. As such, the rejection under 35 U.S.C. §102(e) is unsupported by the art, and a withdrawal of the rejection is respectfully requested.

Claim 21 recites, in part, “a first valve in the first coolant path,” and “a second valve in the second coolant flow path.” In addition to Noda failing to disclose a second coolant flow path, Noda fails to disclose any valves whatsoever in the coolant flow path. Noda only discloses “bypass valves 62” which are in fluid circuit 40, which, as discussed above, is separate from fluid circuit 30. Therefore, the rejection under 35 U.S.C. §102(e) is unsupported by the art and thus improper. Accordingly, a withdrawal of the rejection is respectfully requested.

Claim 22 recites, “wherein the programmable controller establishes a duty cycle that opens and closes the second valve over time.” Noda fails to disclose a “second valve,” let alone a valve in cooperation with a programmable controller. A withdrawal of the rejection is respectfully requested.

Claims 23 and 24 depend from independent Claim 20. As such, the rejection of those claims under 35 U.S.C. §102(e) is unsupported by the art and a withdrawal of the rejection is respectfully requested.

Claim 25 states, “a controller, the controller being connected to the medical device at a connection point on the proximal end of the medical device.” Noda discloses a temperature controller (24) in a temperature control module (56) which is completely separated from the catheter (20). Assuming, *arguendo*, that the Examiner considers these elements disclosed in Noda to be indicative of the elements of Applicant’s Claim 25, the controller of Noda is completely isolated from the catheter, as shown in FIG. 1 of Noda, and therefore, it cannot be “connected to the medical device at a connection point on the proximal end of the medical device,” as stated in Claim 25. Accordingly, a withdrawal of the rejection under 35 U.S.C. §102(e) is unsupported by the art and a withdrawal is respectfully requested. In addition, Claims

26-33 depend from independent Claim 25, and as such, a withdrawal of the rejection with respect to these dependent claims is requested.

Claim 34 includes, “a console having: a housing, a coolant supply in fluid communication with the medical device.” The Examiner indicates the Noda discloses a console as temperature control module (56). However, the temperature control module (56) of Noda is not in fluid communication with the catheter (20) of Noda. As such, Noda fails to disclose what is stated in Claim 34. Therefore, the rejection under 35 U.S.C. §102(e) is unsupported by the art and thus improper. Accordingly, a withdrawal of the rejection is respectfully requested. In addition, Claims 35-38 depend from independent Claim 35, and as such, a withdrawal of the rejection with respect to these dependent claims is requested.

Claim 39 recites, in part, “a vent line coupled to and disposed between the coolant supply line and the coolant recovery line.” Noda fails to make any reference whatsoever to a vent line. Further, the Examiner has failed to indicate where in the Noda specification this claimed element may be found. As such, the rejection is unsupported by the art and improper, and a withdrawal is requested. In addition, Claims 40-43 depend from independent Claim 39, and as such, a withdrawal of the rejection with respect to these dependent claims is requested.

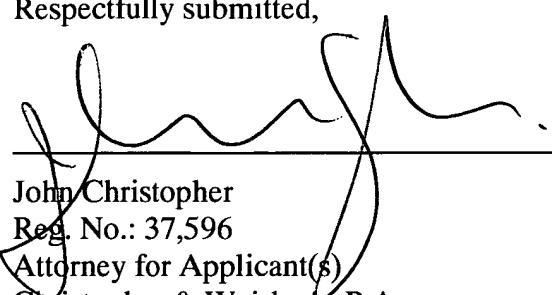
Claim 44 recites, in part, “wherein the coolant recovery line includes a pressure indicator.” Again, Noda fails to disclose or even suggest a pressure indicator anywhere in the apparatus disclosed in the Noda reference. Accordingly, the rejection under 35 U.S.C. §102(e) is unsupported by the art and thus improper. As such, a withdrawal of the rejection is respectfully requested. In addition, Claims 45-47 depend from independent Claim 44, and as such, a withdrawal of the rejection with respect to these dependent claims is requested.

Application No. 10/624,272  
Filed: 07/22/2003  
Attorney Docket No.: 21819-121CON

For all of the above reasons, the claim objections are believed to have been overcome placing Claims 17-47 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

  
John Christopher  
Reg. No.: 37,596  
Attorney for Applicant(s)  
Christopher & Weisberg, P.A.  
200 East Las Olas Boulevard, Suite 2040  
Fort Lauderdale, Florida 33301  
**Customer No. 31292**  
Tel: (954) 828-1488  
Fax: (954) 828-9122

54482